

Remarks/Arguments

Claims 21-32 are pending in the application. Claims 21 and 24 are in independent form. Claims 1-12 were previously withdrawn. Claims 13-20 were previously cancelled. Claims 21-32 stand rejected.

All claim amendments are directed to correct informalities to place the application in condition for allowance or in better condition for appeal of the prior art rejection. "An amendment presenting rejected claims in better form for consideration on appeal may be admitted." 37 CFR 1.116(b)(2).

Claim Rejections Under 35 USC § 112

Claim 21-32 stand rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claim 21, the Examiner states that it is unclear whether the recitation of "an alignment guide" in line 6 of the claim is "referring to the first and second alignment features recited later." Applicants adopt the Examiner's suggestion of making "an alignment guide" plural to more clearly point out that this element is indeed referring to the first and second alignment features recited later in the claim. For further clarity, Claim 21 is also amended to replace "alignment feature" with "alignment guide" for consistency. This amendment is not limiting as Para. [1017] of the specification states that "[a]n alignment guide, as used herein, can be anything such as a mark, feature, detent, recess, protrusion, hole, or the like that is used for aligning two or more members together at a particular desired location where they are to be connected to each other." Likewise, many of the remaining claims, including claims 22, 24, 25 and 29-31, are

amended for consistency in this regard.

Applicants further amend Claim 21 to remedy the issues of antecedent basis. The Examiner states that lines 5-6 of the claim "only recite the data including dimensions and locations, not lengths." The claim is amended for clarity by replacing "lengths" with "dimensions."

All the remaining claims are amended for consistency and with respect to antecedent basis as raised by the Examiner. In particular, Claim 22 is amended to replace "an item" with "the fasteners" and Claim 23 is amended to more clearly point out that "self-drilling screws" are indeed the fasteners recited in claim 21. Regarding claims 26-29, Applicants amend Claim 24, from which Claims 26-29 depend, to recite "forming using a roll-forming machine on the first "C" channel stud an assembly tag..." to perfect antecedent basis. Claims 26-29 are also amended to clarify that "forming" is performed *using* the roll-forming machine rather than performed *on* the roll-forming machine.

Claim Rejections Under 35 USC § 103

Claims 21-32 stand rejected under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 5,715,642 to Buers et al. (Buers) in view of U.S. Patent No. 6,813,919 to Ellis (Ellis).

Ellis teaches making a frame, not a truss, as the Examiner states on page 7 of the office action. A truss comprises at least some members that meet at angles of other than ninety degrees. The frame of Ellis is much simpler, composed of stud of the same length, meeting other members at ninety degrees. Applicants submit, therefore, that claims 21 and 24 and their dependents are patentable over the art of record.

Applicants wish to particularly traverse the rejections of claims 26 and 27. A broad claim interpretation for purposes of examination is not unlimited; it must still be reasonable and

consistent with how a skilled person would interpret the claim in light of the specification. “The Patent and Trademark Office (“PTO”) determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction ‘in light of the specification as it would be interpreted by one of ordinary skill in the art.’” MPEP 2111 citing *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364[, 70 USPQ2d 1827] (Fed. Cir. 2004).

Claim 26 requires forming using the roll forming machine “an assembly tag that specifies the connections of the stud.” The Examiner states that “Buers discloses forming holes on the piece which correspond to possible connections for the stud and thus act as an assembly tag for specifying the connections for the stud (Fig. 7).”

As the Examiner points out, the holes correspond to multiple “possible” connections and thus do not specify connections to the stud. Webster’s New World Dictionary (2002) defines “specify” as “1 a: to mention or name in a specific or explicit manner: tell or state precisely or in detail <~ the uses of a plant> <clearly *specified* the one he meant> <the bequest *specifies* that the recipient must care for the cat>.” Pg. 2187. Buers specifically states studs that “the beams can be connected together at varying angles.” Col. 5, lines 57-58. As described in the previous response, the goal of the hole pattern in Buers is to make his stud connections less specific, not more so.

A “tag” is defined in Webster’s New World Dictionary (2002) on Page 2327 as:

6a(1): a marker made usu. of cardboard, plastic, or metal and used for identification or classification <a ~ pinned to his lapel, bearing his name and destination –*Current Biog.*> <a string shipping ~ slipped through a loop in the handle is used instead of the gummed label –Elizabeth Golterman> - see DOG TAG, LICENSE PLATE, PRICE TAG.”

An assembly tag is shown in FIG. 2. Skilled persons, giving the term “assembly tag” its broadest

reasonable interpretation in light of the specification, would not consider Buers "holes" to be an assembly tag.

Applicants therefore respectfully submit that a skilled person, giving the term "an assembly tag that specifies connections of the stud" its broadest reasonable interpretation in light of the specification would not consider that element to encompass the holes of Buers because they are not "tags" and do not "specify."

Claim 27 requires "an assembly tag that specifies the truss in which the stud is to be used." The Examiner states: "Buers disclose applying tags on the studs which identify the length of a piece (Col. 1, lines 37-40) which inherently specifies the truss in which the stud can be used since it can be used in any truss." This rejection, as best understood, means that because a stud can be used in any truss, the truss that it can be used in is specified. Applicants submit that the definition of "specify," described above, is inconsistent with the Examiners interpretation that because something can be used in any truss, the truss that it is used in is specified. By similar logic, specifying the length of a nail specifies the structure it is used in, since the nail can be used in any structure. Applicants' FIG. 2 shows a length identifier 206 and also a truss identifier 208, and so interpreting a truss identifier to be a length identifier is inconsistent with the specification.

Applicants therefore respectfully submit that a skilled person, giving the term "an assembly tag that specifies the truss in which the stud is to be used" its broadest reasonable interpretation in light of the specification would not consider that term to encompass merely putting the length of a truss on a tag.

With regard to the remaining claims, Applicants reiterate their arguments in their Feb 17, 2009, response.

CONCLUSION

It is believed that all of the pending issues have been addressed. However, the absence of a reply to a specific rejection/objection, issue, or comment does not signify agreement with or concession of the rejection/objection, issue, or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this reply should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this reply, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

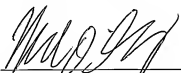
Applicants submit that all claims in the application are now in condition for allowance, and Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Further, Applicants believe that required fees are being submitted herewith. However, if the Commissioner determines that additional fee(s) are required, Applicants request that such fees be charged to Deposit Account 50-1635.

Respectfully submitted,

Date: August 27, 2009

By: _____


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